

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3041 OF 2005

|                                      |    |               |
|--------------------------------------|----|---------------|
| ECIL - RAPISCAN LTD.                 | .. | ..Petitioner  |
| Versus                               |    |               |
| Shivaji D. Chodankar & Anr.          | .. | ..Respondents |
| Mr.V.P.Vaidya for petitioner         |    |               |
| Mr.Jaiprakash Sawant for respondents |    |               |

CORAM : P.V.KAKADE, J.

DATE : 21ST DECEMBER, 2005

P.C.:

1. Heard the learned counsel for both the parties.  
Perused the record.
2. Rule, rule is made returnable forthwith by consent.
3. The petitioner has challenged the order passed by the Industrial Court, Mumbai dated 15.10.2005 dismissing the Revision Application and confirming the Order passed by the Presiding Officer, Labour Judge dated 13.10.2005 rejecting the application dated

19.1.2005 in Complaint (ULP) No.135 of 2005.

4. The application was moved by the respondent-complainant to rejoinder to written statement filed by the petitioners-respondents and the labour court came to the conclusion that the rejoinder to the written statement can be allowed on the ground that there is no express provision under the MRTU & PULP Act, or the Rules to file rejoinder. It was also held by the lower court that there is no express bar to file such rejoinder.

5. The Industrial Court in the course of the revision upheld the view taken by the labour court and has concluded that late filing of the complaint and delay in putting up an amendment application and/or rejoinder on record may not bar respondent from exercising his right to amend the complaint and there appears no change of nature in the original complaint by admitting the amendment application and/or rejoinder.

6. In my considered view, it appears that both the courts below have missed the issue involved. It is needless to mention that if certain facts are to be

added in the pleadings under the procedural law, i.e. the provisions relating to amendment under the Civil Procedure Code, is required to be made and after hearing the application by giving opportunity to both the sides the court proceeds to pass proper order either to allow the application or reject the same. However, in this regard the complainant appears to have preferred to shortcut to file rejoinder application instead of making application to the amendment to the complaint and thereafter has incorporated the complaint and the so called rejoinder in his affidavit of evidence before the labour court.

In my considered view, therefore, the view taken by both the courts below appears to be erroneous and therefore, the order passed by the Industrial Court has to be set aside.

7. Hence the petition is made absolute in terms of prayer clause (b). However, it is clarified that liberty is given to the respondent-complainant to make an application for amendment of the complaint within two weeks from the date of this order and the learned Labour Judge shall consider the application on merits after

giving opportunity to both the sides to put up their respective cases. With this direction the petition stands disposed of with no order as to costs.